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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,002

01/19/2006

Santiago Echeverri

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5148

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02/12/2009

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EXAMINER

YANG, ANDREW

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

02/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/565,002	Applicant(s) ECHEVERRI, SANTIAGO	
	Examiner ANDREW YANG	Art Unit 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to Applicant's amendment filed on 2/4/2008.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 23. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Dale et al. (U.S. Patent No. 4893619).

Dale et al. discloses a guide 10 having a shaft 30, a frame 40 situated between the shaft 30 and an instrument fixing means. The instrument fixing means is considered an end of frame 40 that connects to a surgical tool 20. The guide 10 has pointing means 150, 140 at the distal end of the shaft 30. Pointing means 150, 140 are parallel and are adjustable. An orientation means 130 is used to define a reference plane.

Claims 1, 9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Farmer et al. (U.S. Patent No. 5141512).

Farmer et al. discloses a guide having a shaft 75, an instrument fixing means 71, and a frame 74 between the shaft 75 and instrument fixing means 71. The guide also has a pointing means 76 situated at the shaft distal end and orientation means 72 for defining a reference plane. The guide is used with a angle measuring device/calibration device (Figure 10B). The device of farmer et al. can also be considered a pelvic positioner having two feelers 66 and orientation means 73.

Claims 1, 3, 7, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Subba Rao (U.S. Patent No. 5743265).

Subba Rao discloses a guide 60 having a shaft 80, an instrument fixing means at end 62 of the frame for attaching to tool 10. The frame is situated between the shaft 80

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and instrument fixing means. A pointing means is situated at the distal 84 end of the shaft 80. The pointing means is a laser 90, and is considered situated at the distal end since the battery end 94 of the laser 90 is situated at a distal end of the shaft 80. An orientation means 40 defines a reference plane. The guide device is used with an acetabular cup instrument 10 having a shaft 20 a handle 24 and a distal end for receiving a cup positioner 100. The fixing means at end 62 is coupled to the tool, and thus is considered to be capable of having a quick release, such as a screw.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Subba Rao (U.S. Patent No. 5743235) in view of Sterrenberg (U.S. Patent No. 4393599).

Subba Rao discloses the claimed invention except for two bubble levels. Sterrenberg discloses a guide device having two bubble levels 23, 25 in order to orient the device in accordance to two different axes. It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Subba Rao with two bubble levels in view of Sterrenberg in order to orient the device with respect to two different axes. With regard to claim 6, it is only a functional recitation of

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the device and thus, is anticipated if the corresponding structure is shown and is capable of performing the function. It is considered that the device of Subba Rao as modified by Sterrenberg is capable of performing the claimed function.

Claims 1 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buechel et al. (U.S. Patent No. 5030221) in view of Subba Rao (U.S. Patent No. 6743235).

Buechel et al. discloses a pelvic orientation witness 100, having a pelvic fixing means 300, and an orientation means 400. Buechel et al. further discloses a device 502 for use with an acetabular cup. Buechel et al. fails to disclose a guide member as claimed in claim 1. Subba Rao teaches the guide as claimed in claim 1 so that an instrument used with an acetabular cup can be properly aligned. It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Buechel et al. in combination with the guide device as claimed in view of Subba Rao, so that the acetabular cup could be properly aligned.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW YANG whose telephone number is (571)272-3472. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew Yang/
Examiner, Art Unit 3775
2/4/2009

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733